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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by International Educational Development Inc., a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[20 March 1997]

1. "The peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties" state the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, a body of principles developed by international legal experts. International Educational Development (IED) is extremely concerned that the concept of national, or State, security is used in a broad and arbitrary fashion in the legal systems of a number of countries, particularly in Asia. IED believes that this concept, which is often inadequately defined in the relevant laws, may result in arbitrary and unfair judicial procedures, and notes with concern that it is commonly used to curb the rights to freedom of expression and association and to suppress dissenting voices, especially those of critics of the Government and labour organizers.

2. This use of national security as a rationale for suppressing dissent has been used around the world. In recent years China has increasingly employed this rationale in justifying prosecutions and arbitrary detention of dissidents and has incorporated it into several new laws and regulations, including the 1993 State Security Law and the 1988 Law on the Protection of State Secrets. This process has culminated in the National People's Congress' revision of China's Criminal Code, passed in March 1997, which replaced crimes

of "counter-revolution" with those of "jeopardizing State security". Since the definition of "State security" and of what constitutes harm to it is left entirely to the discretion of the law enforcement authorities, IED believes that, unfortunately, this revision does not actually mean any substantive change in law or practice, as it does not lift any of the significant restrictions on the rights to freedom of expression and association. Indeed, it is resulting in a more repressive climate, as the severe sentences imposed on Wang Dan and Wei Jingsheng in the past year make abundantly clear.

3. The crime of "counter-revolution" has been used extensively throughout the history of the rule of the Chinese Communist Party. Punishments for "thought crimes" continued during the reform period, beginning with the prosecution of Wei Jingsheng, who was sentenced to 15 years' imprisonment in 1979, continuing with convictions of Democracy Wall activists across the country, and culminating with the crackdown on the 1989 protests, in which hundreds, even thousands, of people nationwide were convicted and sentenced on counter-revolutionary charges. In 1995, Wei Jingsheng was charged with "conspiracy to subvert the Government" through "crimes" which included "publishing anti-government articles abroad", discussing "the struggle" with his friends and raising money for victims of political persecution and their families, and was sentenced to a further 14 years' imprisonment.

4. Wang Dan, a student leader in the 1989 democracy movement, was charged both under the Criminal Code and the 1993 State Security Law and, in October 1996, found guilty of "conspiring to subvert the Government". His "crimes", similar to those with which Wei Jingsheng was charged, were merely his exercise of his internationally-recognized rights to freedom of expression and association. However, the court characterized these actions as "criminal acts which endangered the security of the State". Wang Dan was sentenced to 11 years in prison and 2 years' deprivation of political rights. After a three-hour-long hearing at which none of the witnesses the defence side requested be called were heard, the court recessed for half an hour and then issued a written verdict which virtually reproduced the indictment: this verdict had clearly been decided in advance. Wang's mother, Wang Lingyun, spoke in Wang Dan's defence, and his father and sister were also present in the courtroom. None of Wang's other family members or any of his friends were permitted to attend the trial, while no independent observers were admitted.

5. In the last few years, a number of individuals have been convicted of offences such as "leaking State secrets" and "espionage" for exercising their fundamental rights and freedoms. In December 1996, Chinese scholar Li Hai was found guilty of "prying into and collecting the following information about people sentenced for criminal activities during the 4 June 1989 period: name, age, family situation, crime, length of sentence, location of imprisonment, treatment while imprisoned". The verdict classified this information as "State secrets". Li Hai was sentenced to nine years' imprisonment and two years' deprivation of political rights. Li Hai had been held in incommunicado detention since he was apprehended in May 1995, and charged a year later with "leaking State secrets" under the Law on the Protection of State Secrets. In another example, Tibetan musicologist Ngawang Choepel was sentenced to 18 years' imprisonment and 4 years' deprivation of political rights in December 1996. He was charged with spying for the "Dalai Lama clique". The circumstances of the trial remain unknown, as do Choepel's

current whereabouts. A resident of India, he was apprehended while travelling in Tibet to produce a documentary on folk music and dance. He is not known to have ever been involved in any political activity. Protecting State security was mentioned as a rationale for prosecution in all of these cases.

6. IED and its partner organization Human Rights in China are concerned that the revision of the Criminal Code completes China's transformation into a "national security State" which began with the 1993 State Security Law and the 1988 Law on the Protection of State Secrets and its 1990 Implementing Regulations. According to the State Security Law and its Implementing Regulations, acts which jeopardize State security include conspiracy to overthrow the Government, splitting the country and subverting the socialist system. The definition of these acts is left to the discretion of the authorities. In addition, before the revision of the Criminal Code was enacted, the punishment of crimes included in the State Security Law was to be determined by reference to the corresponding part of the Criminal Code, namely the section on counter-revolutionary crimes. Likewise, State secrets are not legally defined. The State Secret Law and its Implementing Regulations contain no procedure for determining whether or not a particular item is a State secret. Moreover, they delegate the power to ascertain the rank of State secrets, and to decide independently what should be classified to the authorities. No meaningful system of judicial review is envisaged for either law in the case of challenges to official determinations of what constitutes harm to State security or a State secret. The State Security Law and the State Secrets Law thus are, in effect, two additional chapters of counter-revolutionary crimes. Eliminating the crime of "counter-revolution" without reforming these two pieces of legislation and their implementing regulations is only a legal disguise.

7. IED wishes to contrast this vague and politically-expedient concept of State security with the Johannesburg Principles, according to which legitimate national security interests are defined as "protect[ing] a country's existence or its territorial integrity against the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the Government". Reasons for restrictions the Principles find illegitimate are "protect[ing] the Government from embarrassment, or exposure of wrongdoing, or to entrench a particular ideology, or to conceal information about the functioning of its public institutions or to suppress industrial action". The Principles further state that restrictions on information about a country's human rights practices must not be imposed by using "State security" as a justification.

8. IED and its partner organization Human Rights in China (HRIC) urge the Government of China and the National People's Congress to proceed to a genuine revision of its Criminal Code based on the standards enshrined in the Johannesburg Principles on National Security so as to allow the greatest possible degree of freedom of expression and information, while protecting only genuine national security interests. Although freedom of expression is supposedly guaranteed in the Chinese Constitution, this right should also be recognized in practice. In addition, IED and HRIC recommend that the National People's Congress repeal the 1993 State Security Law and its Implementing Regulations, and that it thoroughly amend the 1988 Law on the Preservation of State Secrets to incorporate safeguards for basic rights.

9. IED calls on all Governments holding individuals detained for the non-violent exercise of their rights to freedom of expression and association under the rationale of "protecting national security" to release them immediately and unconditionally. It strongly recommends that, in all countries, national security interests be defined narrowly and that any restrictions on expression or information on grounds of protecting national security be clear and open to challenge through review by an independent court.

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